

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

THOMAS JESSE WARD,

Petitioner,

v.

DAVID BUSS, Warden,

Respondent.

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Case No. CIV-23-146-JFH-GLJ

**PRE-ANSWER MOTION TO DISMISS PETITION FOR WRIT OF
HABEAS CORPUS, IN THE ALTERNATIVE, FOR FAILURE TO
EXHAUST NECESSARY STATE COURT REMEDIES**

Comes now Respondent, by and through the Attorney General of the State of Oklahoma, and respectfully asks that, should this Court deny Respondent's Pre-Answer Motion to Dismiss Petition for Writ of Habeas Corpus as Time-Barred by the Statute of Limitations, that in the alternative, the instant Petition for Writ of Habeas Corpus be dismissed for failure to exhaust necessary state court remedies, pursuant to 28 U.S.C. § 2254(b)(1)(A). Respondent has filed a brief in support of this Motion which is being filed simultaneously herewith, and which more fully explains and supports Respondent's position.¹

Wherefore, for the reasons contained within Respondent's Brief in Support, Respondent respectfully requests that this Court dismiss the instant Petition as Petitioner has not exhausted his state court remedies for all of the issues raised therein.

¹ This Court's Order calling for a response expressly states the following: "As an alternative to filing a Rule 5 answer, Respondent may file within thirty (30) days a motion to dismiss based upon 28 U.S.C. § 2241, 28 U.S.C. § 224[4], 28 U.S.C. § 2254, or other applicable statute." Doc. 41. In the event this Court denies this Motion to Dismiss—as well as Respondent's Motion to Dismiss Petition as Time-Barred—Respondent respectfully requests permission to file a response on the merits.

Respectfully submitted,

GENTNER F. DRUMMOND
ATTORNEY GENERAL OF OKLAHOMA

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

X I hereby certify that on June 30, 2023, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing.

X I hereby certify that on June 30, 2023, I electronically transmitted the attached document to the following ECF registrants using the ECF System for filing:

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